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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,448	07/29/2003	Robert A. Foth	PFOT0001/MRK	9031
7590 10/01/2004				
KHORSANDI PATENT LAW GROUP, A.L.C. Suite 312 140 South Lake Ave. Pasadena, CA 91101-4710			EXAMINER LIEU, JULIE BICHNGOC	
			ART UNIT 2636	PAPER NUMBER

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/630,448

Applicant(s)

FOTH, ROBERT A.

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-20 is/are rejected.
- 7) ☒ Claim(s) 14 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/28/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1- are rejected under 35 U.S.C. 102(e) as being anticipated by McClure et al. (US Patent No. 6,439,941).

Claim 1:

McClure discloses two-way communications device for aquatic sports, the device comprising:

- a. a life vest 12; and
- b. a two-way transceiver 14 embedded in the life vest (fig. 1A and 2).

Claim 2:

The device further comprising an antenna 16 connected to a shoulder portion of the life vest, wherein said antenna is connected with wires to the two-way transceiver. Col. 4, first paragraph. The wires are embedded within a waterproof wire harness 28, which is also part of the life vest 12

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Claim 3:

The transceiver is sealed in a waterproof housing embedded in the life vest. Col. 4, first paragraph.

Claim 6:

A microphone 26 is embedded in a collar portion of the life vest 12.

Claim 15:

The system 10 in McClure comprises:

- a. at least one life vest comprising a first two-way transceiver 14, a first antenna 16, and a first set of wires connecting the first transceiver to the first antenna, wherein the transceiver and said wires are embedded in the life vest, and wherein the antenna 16 is connected to the life vest;
- c. a second transceiver 20, wherein said second transceiver is one of embedded in a second life vest or contained in a mobile unit.

Claim 17:

At least one of said first transceiver and second transceiver 14, 20 is operable according to voice command input to a first microphone connected to the voice operable transceiver.

Claim 20:

The rejection of claim 20 recites the rejection of claim 1 and 2.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 4- are rejected under 35 U.S.C. 103(a) as being unpatentable over McClure et al. (US Patent No. 6,439,941).

Claim 4:

The antenna 16 has a first and second end attached to the shoulder portion of the life vest. It is not clear in McClure whether the antenna forms an arc relative to the shoulder portion of the life vest. Nonetheless, it would have been obvious to one skilled in the art to form an antenna to have a shape conforming with the body contour of a user because it would provide comfort to the user wearing the device.

Claim 5:

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The details of a housing for antenna 16 is not disclosed in McClure. However, the claim feature of the antenna being shrouded with a material that webs the interior of the arc would not be considered an inventive step because a skilled artisan would have utilized different means to isolate the conduction between the antenna and the user's body.

Claim 7:

The device in McClure further comprises: a transducer (inherent since a microphone and speaker is used). The reference fails to particularly disclose a flexible acoustic conduction tube comprising a first end and a second end, wherein the first end of the flexible acoustic conduction tube is connected to the transducer, and wherein the second end of the flexible acoustic conduction tube is connected to the transceiver. However, it would have been obvious to one skilled in the art that the microphone 26 is connected to the transceiver in some way. The claimed flexible acoustic conduction tube only presents a choice in design.

Claim 8:

The device 10 further comprises a microphone embedded in a collar portion of the life vest.

Claim 9:

The rejection of claim 9 recites the rejection of claim 7.

Claim 10:

The transceiver 20 is operable for communication of radio frequency. It is not clearly stated in the reference that the frequency is between 462.5625 MHZ and 467.7125 MHZ. Nonetheless, a skilled artisan would have chosen a proper frequency to ensure successful and

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reliable communication between the device and the monitoring station with the least interference in a chosen environment.

Claim 11:

The rejection of claim 11 recites the rejection of claim 2.

Claim 12:

The rejection of claim 12 recites the rejection of claim 8.

Claim 13:

The rejection of claim 13 recites the rejection of claim 7.

Claim 16:

The rejection of claim 16 recites the rejection of claim 10.

Claim 18:

The first antenna 16 is connected to a shoulder portion of the life vest.

Claim 19:

The rejection of claim 19 recites the rejection of claim 4.

Allowable Subject Matter

5. Claims 14 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Loughlin, US Patent No. 5,326,297.

Politte, US Patent No. 4,725,253.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on Mon-Fri 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu
Primary Examiner
Art Unit 2636

Sept 27, 04